

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

ECOFATOR, INC.,

Plaintiff,

v.

ECOBEE, INC.,

Defendant.

Case No. 6:21-cv-00428-ADA

JURY TRIAL DEMANDED

**DISCOVERY ORDER**

On November 1, 2022, counsel for Plaintiff EcoFactor, Inc. (“EcoFactor”) and Defendant ecobee, Inc. (“ecobee”) submitted to the Court a chart summarizing two discovery disputes, which the Court indicated would be addressed at a November 3, 2022 discovery conference.

As to the first dispute, ecobee requested an Order that EcoFactor “must produce a copy of any contingency or litigation funding agreement, including without limitation with its counsel Russ, August & Kabat, within 7 days.”

As to the second dispute, EcoFactor requested an Order granting the following relief: “On or before November 7, 2022, ecobee shall produce all Source Code for the accused features and shall make available Rule 30(b)(6) witnesses who previously testified on Source Code for an additional deposition (i.e., Alan Hietala and Mark Malchiondo) for 3.5 hours on the record. The witnesses shall be prepared to address all source code and technical documents produced for the first time on or after October 11, 2022, including new firmware builds and non-firmware files, and shall have access to the source code on a computer during the deposition. The witnesses shall also be prepared to discuss, and ecobee shall produce, changelogs and release notes sufficient to describe when each build/version was released and how builds/versions differ from one another.”

On November 3, 2022, the Court informed the parties that the Court would resolve the parties' disputes by ruling on their chart submissions, canceling the discovery conference on these issues that was scheduled for later that day.

**CONCLUSION**

The Court, upon consideration of the parties' respective requests, is of the opinion that the requests should be denied.

IT IS THEREFORE ORDERED that ecobee's request to compel production of EcoFactor's contingency fee agreement is DENIED.

IT IS FURTHER ORDERED that EcoFactor's request to compel production of all source code from ecobee and request for additional deposition of Rule 30(b)(6) witnesses is DENIED.

SIGNED on this 14th day of November, 2022.

  
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ALAN D ALBRIGHT  
UNITED STATES DISTRICT JUDGE